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STATUTORY INSTRUMENTS

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**2015 No. 879**

**The Occupational Pension Schemes  
(Charges and Governance) Regulations 2015**

**PART 3**

**CHAPTER 2**

**ADDITIONAL GOVERNANCE REQUIREMENTS  
FOR RELEVANT MULTI-EMPLOYER SCHEMES**

**Definition of “relevant multi-employer scheme”**

**21.** The Administration Regulations are amended as follows—

(a) in regulation 1(2) insert in the appropriate place alphabetically—

““relevant multi-employer scheme” means a relevant scheme in relation to which some or all of the participating employers are not connected employers, or which is promoted as a scheme where participating employers need not be connected employers, except where—

- (a) the scheme has distinct sections relating to employers which are not connected employers and each of those sections is governed by different trustees or managers (or, where the scheme does not currently have participating employers which are not connected employers, it will have such sections when there are participating employers which are not connected employers);
- (b) the scheme is established under section 67 of the Pensions Act 2008; or
- (c) the scheme is established by or under an enactment, other than a scheme referred to in paragraph (b).”;

(b) after regulation 1(2) insert—

“(2ZA) For the purposes of the definition of “relevant multi-employer scheme”—

“connected employers” means two employers which are—

- (a) part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006<sup>(1)</sup> (meaning of “subsidiary” etc); or
- (b) partnerships, each having the same persons as at least half of its partners;

“participating employer” means any employer currently or previously participating in the scheme in accordance with the scheme rules.”.

## **Additional requirements for relevant multi-employer schemes**

22. In the Administration Regulations after regulation 25(2) insert—

### **“CHAPTER 3**

### **RELEVANT MULTI-EMPLOYER SCHEMES**

#### **Annual statement regarding governance: relevant multi-employer schemes**

26. Where a relevant scheme is a relevant multi-employer scheme, the statement prepared in accordance with regulation 23 must include such of the following additional information as is relevant to the scheme—

- (a) how the requirements of regulation 27(2) (majority of trustees and chair to be non-affiliated) have been met during the year;
- (b) where a trustee who is non-affiliated (within the meaning of regulations 27 and 28) was appointed during the year, details of how the requirement of regulation 28(1) (open and transparent appointment process) was met;
- (c) details of the arrangements in place during the year to meet the requirement of regulation 29 (representation of the views of members to the trustees or managers).

#### **Appointment of trustees**

27.—(1) A relevant multi-employer scheme which is a trust scheme must have at least three trustees (but see also paragraphs (4) to (7)).

(2) A majority of the trustees of a relevant multi-employer scheme which is a trust scheme, including the chair of the trustees, must be non-affiliated (but see also paragraphs (4) to (7)).

(3) Where there is a chair of the trustees at the time any other trustee is appointed, the chair must be consulted on the appointment.

(4) In relation to a company which is not a professional trustee body and which is a trustee of a relevant multi-employer scheme, this regulation applies as if—

- (a) the company were not a trustee of the scheme; and
- (b) each individual who is a director of the company and through whom the company exercises its functions as trustee, and any professional trustee body who is a director of the company, were a trustee of the scheme.

(5) A new relevant multi-employer scheme must meet the requirements of paragraphs (1) and (2) before the end of the period of three months starting with the date on which the scheme is established (or, if later, the date on which the scheme becomes a relevant multi-employer scheme which is a trust scheme).

(6) Where a trustee of a relevant multi-employer scheme—

- (a) ceases to be a trustee for any reason; or
- (b) in the case of a trustee who was non-affiliated, ceases to be non-affiliated, the requirements of paragraphs (1) and (2) must be met before the end of the period of three months starting with the date on which the former trustee ceases to be a trustee or, as the case may be, the trustee ceases to be non-affiliated.

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(2) Inserted by regulation 19 of these Regulations.

(7) Where a relevant multi-employer scheme was established, or became a relevant multi-employer scheme, before 6th April 2015 and the requirements of paragraphs (1) or (2) are not met on that date, the requirement in question must be met before the end of the period of three months starting with that date.

(8) In this regulation and in regulation 28, “non-affiliated” means independent of any undertaking which provides advisory, administration, investment or other services in respect of the relevant multi-employer scheme (but see also regulation 28).

### **Appointment of trustees: trustees who are non-affiliated**

**28.**—(1) The appointment process for a trustee who is to count as non-affiliated for the purposes of regulation 27(2) must be open and transparent.

(2) For the purposes of paragraph (1), an appointment process which is open and transparent includes (but is not limited to) a process which—

- (a) includes advertisement of the vacancy for a trustee in at least one appropriate national publication;
- (b) includes engagement of the services of a recruitment agency to assist in the selection of candidates; or
- (c) meets the requirements of section 241(2) or, as the case may be, 242(2) of the 2004 Act (nomination and selection of member-nominated trustees and member-nominated directors of corporate trustees).

(3) For the purposes of determining whether a person is non-affiliated, the following matters must be taken into account—

- (a) whether the person—
  - (i) is a director, manager, partner or employee of an undertaking which provides advisory, administration, investment or other services in respect of the scheme (a “service provider”) or an undertaking which is connected to a service provider; or
  - (ii) has been such a director, manager, partner or employee during the period of five years ending with the date of the person’s appointment as a trustee;
- (b) whether the person receives any payment or other benefit from a service provider, other than—
  - (i) a payment or other benefit in respect of a role in the governance of a personal pension scheme in which the person is required to act in the interests of some or all of the scheme members; or
  - (ii) a payment in respect of the person’s role as trustee of the relevant multi-employer scheme;
- (c) whether or not, in the person’s relationship with a service provider, the person’s obligations to the service provider conflict with their obligations as a trustee of the relevant multi-employer scheme and whether their obligations as a trustee will take priority in the case of a conflict.

(4) A trustee who is an individual is not to count as non-affiliated for the purposes of regulation 27(2) for—

- (a) any one period of more than five years; or
- (b) subject to paragraph (5), more than ten years in total.

(5) No period of appointment of a trustee who is an individual is to be taken into account for the purposes of paragraph (4)(b) if more than five years have elapsed since the trustee last held office as a trustee of the same relevant multi-employer scheme.

(6) Paragraphs (1) to (5) apply to an individual who is a director of a corporate trustee and to whom regulation 27 applies as if he or she were a trustee as they apply to a trustee who is an individual.

(7) Where a trustee who is to count as non-affiliated for the purposes of regulation 27(2) is a professional trustee body—

- (a) the trustee is not to count as non-affiliated for any one period of more than five years;
- (b) a nominated individual must act as representative of the trustee; and
- (c) the nominated individual may not act as representative of the trustee for more than ten years in total.

(8) For the purposes of paragraph (3)(a), two undertakings are “connected” if they are—

- (a) part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006; or
- (b) partnerships, each having the same persons as at least half of its partners.

### **Representation of members**

**29.** The trustees or managers of a relevant multi-employer scheme must make arrangements to encourage members of the scheme, or their representatives, to make their views on matters relating to the scheme known to the trustees or managers.”.

### **Administration Regulations: further amendment**

**23.** In regulation 1(2) (interpretation) of the Administration Regulations, in the definition of “relevant multi-employer scheme”**(3)**—

- (a) after paragraph (a) insert “or”; and
- (b) omit paragraph (c) and the word “or” immediately preceding it.

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**(3)** Inserted by regulation 21 of these Regulations.